

1 **Rene Ortiz, Pro Se**  
2 7566 Phoenix Park Drive  
3 Sacramento, California 95823  
4 Telephone: (916) 919-2754  
5 Email: [reneortiz@live.com](mailto:reneortiz@live.com)

FILED

APR 06 2022

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY   
DEPUTY CLERK

6 **IN THE UNITED STATES DISTRICT COURT**  
7 **EASTERN DISTRICT OF CALIFORNIA**

8 **RENE ORTIZ,**

§ **CASE NO. 2:21-CV-01221-KJM-CKD**

9 **Plaintiff,**

§

10 **v.**

§

11 **MARY MARKEY, WENDY TORRES,**  
12 **and UNITED STATES DEPARTMENT**  
13 **OF VETERANS AFFAIRS,**

§ **PLAINTIFF'S MOTION FOR ENTRY**  
§ **OF DEFAULT JUDGMENT**

14 **Defendant.**

§

15  
16 COMES NOW, Plaintiff, Rene Ortiz (hereinafter "Ortiz" or "Plaintiff"), representing  
17 himself as a *Pro Se* litigant, and hereby respectfully moves the Court, pursuant to Federal Rules  
18 of Civil Procedure 16(a), to enter a default judgment against Defendants in this matter.

19  
20 The Defendants, Mary Markey, Wendy Torres, Michele Kwok, Ramon Leal Rodney  
21 Hackney and United States Department of Veterans affairs, having failed to answer Plaintiff's  
22 Amended Complaint, or otherwise defend in this action.

23  
24 The undersigned Pro Se Plaintiff, Rene Ortiz, moves this Court for entry of a default  
25 judgment as to defendants, upon the amended complaint heretofore filed and served upon the  
26 defendants, in accordance with the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure,  
27 and in support thereof shows the Court the following.

28  
**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT – PAGE 1**

1. On February 25th, 2022, Plaintiff filed an Amended Complaint alleging certain illegal  
2 practices by defendants. A copy of said Amended Complaint is attached hereto as Exhibit A and  
3 is incorporated herein by reference.
4. On February 24th, 2022, Plaintiff sent opposing counsel a copy of the Amended  
5 Complaint via email as follows:

6  
7 **William Dean Carter, Esq., Assistant United States Attorney**  
8 **Joseph B. Frueh, Esq., Assistant United States Attorney**  
9 501 I Street, Suite 10-100  
Sacramento, California 95814  
Phone: (510) 850-7785  
10 Email: [webmaster.cae2@usdoj.gov](mailto:webmaster.cae2@usdoj.gov);  
11 [Wendy.torres@va.gov](mailto:Wendy.torres@va.gov)  
[Michele.kwok@va.gov](mailto:Michele.kwok@va.gov)  
[Rodney.hackney@va.gov](mailto:Rodney.hackney@va.gov)  
[Mary.markey@va.gov](mailto:Mary.markey@va.gov)  
12 [AFGElocal1159@gmail.com](mailto:AFGElocal1159@gmail.com)  
[Rodney.hackney@va.gov](mailto:Rodney.hackney@va.gov)  
13 And See Attached  
14  
15

16 A copy of the email is attached hereto as Exhibit B and is incorporated herein by reference.

17 3. As of April 1, 2022, after more than fourteen (14) days had elapsed since the service of  
18 said Amended Complaint upon defendants, and no Answer thereto having been served by  
19 defendants upon the Plaintiff or this court, the Plaintiff moves this court to enter default.

20 4. Defendants have failed to plead or otherwise defend Plaintiff's Amended Complaint and  
21 this action, and the Plaintiff is entitled to judgment by default against defendants.

22 5. Pursuant to the provisions of Rule 55(b)(2), Federal Rules of Civil Procedure, this Court  
23 is empowered to enter a default judgment against the defendant for relief sought by plaintiff in its  
24 complaint, and written notice of this action has been given to defendant as set forth in the  
25 attached affidavit.

**PRAYER**

1 WHEREFORE, Plaintiff moves that this Court enter a judgment of default against  
2 defendants in this matter.

3

4

5 • **The Return to full duty as a Veterans Claims Examiner at VBA Oakland Boston**  
6 **Regional Office with full pay and benefits retroactive to June 23, 2017.**

7

8

9

10 **AFFIDAVIT**

11 I, Rene Ortiz, do hereby certify under penalty of perjury that the statements and  
12 allegations set forth in the foregoing Motion are true and accurate to the best of my knowledge  
13 and belief on this \_\_\_\_\_ day of April 2022.

14 S E A L

15 See attachment

16

17 Notary Public

18 My Commission Expires: March 19, 2026

19

20 **JUDGMENT**

21 Judgment should hereby be entered in favor of Plaintiff, Rene Ortiz, and against  
22 Defendants, Mary Markey, Wendy Torres, Michele Kwok, Ramon Leal Rodney Hackney, and  
23 United States Department of Veterans affairs, for three hundred thousand dollars (\$300,000.00),  
24 plus interest on the judgment at the legal rate until the judgment is satisfied and the return to full  
25 employment as a Veterans Claims Examiner at VBA Oakland or Boston Regional Office.  
26

1  
2 Dated: April 6th, 2022.

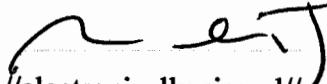
3 Respectfully submitted,  
4

5   
6 **Rene Ortiz, Pro Se**  
7 7566 Phoenix Park Drive  
8 Sacramento, California 95823

9 **CERTIFICATE OF SERVICE**

10 I certify under penalty of perjury that the attached document, Plaintiff's Motion for Entry  
11 of Final Default Judgment, was sent, via electronic mail (email), and regular US Mail on this 6th  
12 day of April 2022 to the following:

13 **William Dean Carter, Esq.**, Assistant United States Attorney  
14 **Joseph B. Frueh, Esq.**, Assistant United States Attorney  
15 501 I Street, Suite 10-100  
16 Sacramento, California 95814  
17 Phone: (510) 850-7785  
18 Email: [webmaster.cae2@usdoj.gov](mailto:webmaster.cae2@usdoj.gov)

19   
20 **Rene Ortiz, Pro Se**

21  
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## ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Sacramento)

On April 6, 2022 before me, Sgreve, Notary Public  
(insert name and title of the officer)

personally appeared Rene Ortiz  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



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12 **EXHIBIT A**  
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**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT – PAGE 5**

1      **Rene Ortiz, Pro Se**  
2      7566 Phoenix Park Drive  
3      Sacramento, California 95823  
4      Telephone: (916) 919-2754  
5      Email: [reneortiz@live.com](mailto:reneortiz@live.com)

FILED

FEB 25 2022

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY *[Signature]* DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

8      **RENE ORTIZ,**

§      **CASE NO. 2:21-CV-01221-KJM-CKD**

9      **Plaintiff,**

§

10     **v.**

§

11     **MARY MARKEY, WENDY TORRES,**  
12     **and UNITED STATES DEPARTMENT**  
13     **OF VETERANS AFFAIRS,**

§      **PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

14     **Defendant.**

§

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<i>Comstock Oil &amp; Gas Inc. v. Alabama &amp; Coushatta Indian Tribes of Texas</i> , 261 F.3d 567 (5th Cir. 2001).....	1, 2, 7, 8, 11, 12
<i>Eggenberger v. W. Albany Tp.</i> , 820 F.3d 943 (8th Cir. 2016).....	8
<i>Texas v. Alabama Coushatta Tribe of Texas</i> , 298 F. Supp. 3d 909 (E.D. Tex. 2018).....	3, 4, 9
<i>Texas v. Alabama Coushatta Tribe of Texas</i> , 918 F.3d 440 (5th Cir. 2019).....	1, 3, 4
<i>Texas v. Alabama Coushatta Tribe of Texas</i> , 140 S. Ct. 855 (2020).....	3

1 *Wilkes v. PCI Gaming Auth.*,  
2 287 So. 3d 330 (Ala. 2017).....10, 11

3 **STATUTES**

4 The Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act,  
5 Pub L. No. 100-89, 101 Stat. 666 (Aug. 18, 1987) ("the Restoration Act").....1

6 28 U.S.C. § 1331.....1, 2

7 28 U.S.C. § 1367.....2

8 28 U.S.C. § 1391(b).....3

9 28 U.S.C. § 2201.....1

10 28 U.S.C. § 2202.....1

11 The Master Agreement between the Department of Veterans Affairs and American Federation of  
12 Government Employees.....1-15

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28 **PLAINTIFF'S EX PARTE MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT – PAGE 11**

1 TO THE HONORABLE JUDGE OF SAID COURT:

2 COMES NOW, RENE ORTIZ (Plaintiff), in the above entitled and numbered cause,  
3 complaining of and against Defendants, MARY MARKEY, WENDY TORRES, RODNEY  
4 HACKNEY, MICHELE KWOK, RAMON LEAL, AFGE Local 1159 and United States  
5 Department of Veterans Affairs (Defendants)), and for cause of action would respectfully show  
6 unto the Court and Jury the following:

7 **I.**

8 **PARTIES**

9 1. Plaintiff, RENE ORTIZ, is an individual who resides in Sacramento, California.

10 2. Defendant, MARY MARKEY (hereinafter "Markey" or "Defendant") is an individual  
11 working for and employed by the United States Department of Veterans Affairs.

12 3. Defendant, WENDY TORRES (hereinafter "Torres" or "Defendant") is an individual  
13 working for and employed by the United States Department of Veterans Affairs.

14 4. Defendant, RODNEY HACKNEY (hereinafter "Hackney" or "Defendant") is an  
15 individual working for and employed by the United States Department of Veterans Affairs.

16 5. Defendant, MICHELE KWOK (hereinafter "Kwok" or "Defendant") is an individual  
17 working for and employed by the United States Department of Veterans Affairs.

18 6. Defendant, RAMON LEAL (hereinafter "Leal" or "Defendant") is an individual working  
19 for and employed by the United States Department of Veterans Affairs

20 7. Defendant, United States Department of Veterans Affairs (hereinafter "VA") is an agency  
21 of the federal government.

22 **II.**

23 **JURISDICTION AND VENUE**

24 8. This Court has jurisdiction pursuant to 28 U.S.C. § 1331.

25 9. Venue for both claims are proper in this Judicial District pursuant to 28 U.S.C. § 1331(b),  
26 because the events giving rise to the claims occurred within this Judicial District.

III.

## **INTRODUCTION**

10. On or about June 4, 2021, Plaintiff filed an action in Sacramento County Superior Court alleging that Defendants breached a contract, breached their fiduciary duties, and failed to perform their duties.

11. Defendants subsequently removed the case to federal court alleging that plaintiff was denied VR&E benefits and lacked subject matter jurisdiction.

12. Plaintiff seeks damages due to Defendants' refusal to pay his school tuition fees and reimburse him for related expenses.

IV.

## **FACTUAL ALLEGATIONS**

13. The Collective Bargaining Agreement- *The Master Agreement between the Department of Veterans Affairs and American Federation of Government Employees* governs all parties and the Agreement.

14. All parties are federal employees.

15. Plaintiff is a bargaining unit employee, considered to be "Labor" or the Union.

16. Plaintiff is a Union member of AFGE Local 1159.

17. Defendants collectively are considered “Management.”

18. All parties are employed by the Veterans Benefits Administration Oakland Regional Office located at 1301 Clay Street in Oakland, California.

19. This dispute is between Labor and Management.

20. Plaintiff is a disabled combat veteran and entitled to Vocational Rehabilitation & Education benefits.

21. Plaintiff and the Defendants, "VA" entered into a contract.

22. Plaintiff suffered damages by Defendants' breach of contract.

V.

**CAUSE OF ACTION**

## **A. Breach of Contract.**

23. Plaintiff incorporates and realleges all statements above as if fully set forth herein.
24. In 2017, the parties entered into a written Agreement.
25. Inasmuch, Plaintiff agreed to retire from employment and Management agree to pay Plaintiff's school tuition and related expenses, including but not limited to, travel.
26. Plaintiff has made repeated demands to Defendants for reimbursement of school tuition and related expenses.

10 27. Defendants have failed to fulfill their part of the Agreement.

11 | 28. Plaintiff has incurred a debt the Defendants are obligated to pay.

## **B. Breach of Fiduciary Duty**

29. Plaintiff incorporates and realleges all statements above as if fully set forth herein.

14 30. The parties had a relationship of trust and confidence giving rise to a fiduciary duty.  
15 Defendants were working for Plaintiff for the duration of the parties' contract. Defendants were  
16 to act primarily for the benefit of Plaintiff while performing its respective duties pursuant to the  
17 contract and its obligations.  
18

19 31. Defendants breached their fiduciary duties by intentionally, fraudulently, and among  
20 other things, failing to follow through on the terms of the contract upon Plaintiff's request.

22 32. As a result of Defendants' breach of fiduciary duty, Plaintiff suffered damages and is  
23 entitled to damages in an amount to be proven at trial because the Plaintiff lost his employment.

24 33. As a result of Defendants' breach of fiduciary duty, Plaintiff is entitled to punitive  
25 damages in an amount to be proven at trial.

1 VI.  
2

3 **DAMAGES**  
4

5 34. Plaintiff incorporates and realleges all statements above as if fully set forth herein.  
6 35. As a direct and proximate result of Defendants conduct, Plaintiff suffered the following  
7 injuries and damages:  
8 a. Reasonable and necessary medical expenses incurred in the past, and, in all  
9 reasonable medical probability, reasonable and necessary medical expenses to be  
10 incurred in the future;  
11 b. Physical pain and suffering in the past, and, in all reasonable probability, physical  
12 pain and suffering the future;  
13 c. Mental anguish in the past and, in all reasonable probability, mental anguish in  
14 the future;  
15 d. Physical disfigurement in the past and, in all reasonable probability, physical  
16 disfigurement in the future;  
17 e. Physical impairment in the past and, in all reasonable probability, physical  
18 impairment in the future;  
19 f. Loss of earnings in the past, and, in all reasonable probability, earning capacity  
20 lost in the future; and  
21 g. Loss of personal property, loss of employment as a Veterans Claims Examiner.  
22

23 VII.  
24

25 **JURY DEMAND**  
26

27 36. With respect to Plaintiff's damages claims, Plaintiff demands trial by jury.  
28

XIII.

## **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff, RENE ORTIZ, moves that after trial on the merits, he has  
4 judgment against Defendant for the following:

- a. **Reinstatement of Plaintiff's former employment position as a Veterans Claims Examiner or an employment position of equal value or significance at the GS 11 Step 9 Grade;**
- b. **Sum in excess of the minimum jurisdictional limits of this Honorable Court;**
- c. **Actual damages;**
- d. **Pre-judgment interest and post-judgment interest at the maximum legal rate;**
- e. **Cost of court, and attorney fees; and**
- f. **Any and all further relief, be it general or special, at law or equity, to which Plaintiff may show himself entitled.**

Dated: February 24th, 2022.

Respectfully submitted,

**Rene Ortiz, Pro Se**  
7566 Phoenix Park Drive  
Sacramento, California 95823  
Telephone: (916) 919-2754  
Email: [reneortiz@live.com](mailto:reneortiz@live.com)

**Rene Ortiz**  
7566 Phoenix Park Drive  
Sacramento, California 95823-3621  
Telephone: (916) 919-2754

---

**CONFIDENTIAL & PRIVILEGED**  
**FOR SETTLEMENT PURPOSES ONLY**

January 12, 2022

**VIA USPS CERTIFIED MAIL/RRR:**

**Camille D. Stroughter, Agency Representative**  
Veteran's Administration Regional Counsel  
Oakland Regional Office  
1301 Clay Street, Suite 1400N  
Oakland, California 94612  
Telephone: (510) 850-7785  
Email: [Camille.Stroughter@va.gov](mailto:Camille.Stroughter@va.gov)

7020 3160 0001 6226 7322

**William Dean Carter, Deputy Chief Counsel**  
U.S. Attorney's Office  
501 I Street  
Suite 10-100  
Sacramento, California 95814  
Telephone: (916) 554-2781  
Facsimile: (916) 554-2900  
Email: [dean.carter@usdoj.gov](mailto:dean.carter@usdoj.gov)

7020 3160 0001 6226 7223

Re: *Rene Ortiz v. Department of Veteran's Affairs / Case No. SF-0752-21-0536-I-1*  
*Rene Ortiz v. Markey et al. / Case No. 2:21-cv-01221-KJM-CKD*

Dear Mr. Carter and Ms. Stroughter:

As you already know, I have been pursuing this matter for a long time now. The Defendant in the above-referenced matter ("Agency") entered into a verbal binding agreement with me prior to my resignation from my federal service. Specifically, binding agreements (hereinafter "Agreement"), are legal contracts, can be enforced under laws at both the federal and state levels.

The terms of the Agreement, included but is not limited to, the following stipulations:

- (a) Appellant agreed to retire only if the Agency would agree to the conditions as follows:

- (b) pay for the Appellant's school tuition and travel expenses as cited in the Collective Bargaining Agreement (CBA) in Article 37; and
- (c) file a "worker's compensation" claim for the Appellant due to his job-related disabilities.<sup>1</sup>

This letter is submitted for settlement purposes only.<sup>2</sup> The California Rules of Evidence prohibit use of this letter and any enclosures as evidence in any legal proceeding without my express consent. If settlement fails for any reason, this letter and its enclosures are to be returned to me without retention of copies.

The bottom line is that the Agency defaulted on its part of the Agreement; thereby, failing to provide the assistance they promised.

### **DAMAGES**

Please allow me to remind you that my initial damages were approximately three hundred thousand dollars (\$300,000.00).

### **CONCLUSION**

In light of the Agency's clear liability in this case and the damages proximately caused, as well as the other damages documented herein, I make a reasonable and fair settlement offer, as follows:

- (1) A lump sum settlement payment of three hundred thousand dollars;
- (2) I will immediately be reinstated as a Veteran's Claim Examiner (VCE) at the GS11/9 level with full pay and benefits at the Manchester or the Boston VBA, Regional Office (the Defendant may select the office);
- (3) My payroll compensation will be retroactive to June 24, 2017;
- (4) Back pay of all tuition and school travel expenses will be reimbursed; and
- (5) After compliance with the above actions, I will dismiss the lawsuit against the Agency in full as final settlement of this matter.

---

<sup>1</sup> "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [169 Cal.Rptr.3d 475].)

<sup>2</sup> The settlement offer contained in this letter is made pursuant to Sections 1152 and 1154 of the California Evidence Code. As such, it cannot be used to prove or disprove the liability, or lack thereof, of any party to the above-entitled action, nor can it be used to prove the invalidity of a claim, or any part of it.

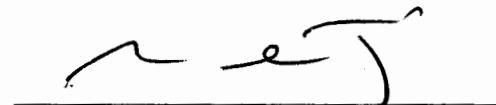
Hopefully, this settlement offer is agreeable, and we can settle this lawsuit and in a cordial fashion; thus, eliminating any further additional and expensive litigation.

Pursuant to California Rule of Civil Procedure, this Proposal for Settlement shall be deemed rejected unless accepted by delivery of a written notice of acceptance within ten (10) days after the service of this Proposal, and no oral communication constitutes an acceptance, rejection, or counteroffer of this Proposal for Settlement.

This matter has languished long enough in litigation, and it is in the best interest of all parties to simply settle this matter at this time. I urge you to discuss this settlement offer with your client.

Please feel free to contact me to discuss this offer in greater detail.

Sincerely,



**Rene Ortiz**

**Rene Ortiz**

7566 Phoenix Park Drive  
Sacramento, California 95823-3621  
Telephone: (916) 919-2754

---

**CONFIDENTIAL & PRIVILEGED**  
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Telephone: (916) 554-2781  
Facsimile: (916) 554-2900  
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7020 3160 0001 6226 7322

**Camille D. Stroughter, Agency Representative**

Veteran's Administration Regional Counsel  
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7020 3160 0001 6226 7223

Re: *Rene Ortiz v. Markey et al. / Case No. 2:21-cv-01221-KJM-CKD*  
*Rene Ortiz v. Department of Veteran's Affairs / Case No. SF-0752-21-0536-I-1*

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### **CONCLUSION**

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<sup>1</sup> "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [169 Cal.Rptr.3d 475].)

<sup>2</sup> The settlement offer contained in this letter is made pursuant to Sections 1152 and 1154 of the California Evidence Code. As such, it cannot be used to prove or disprove the liability, or lack thereof, of any party to the above-entitled action, nor can it be used to prove the invalidity of a claim, or any part of it.

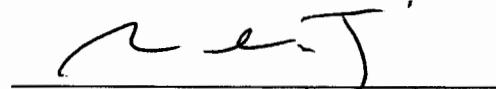
Hopefully, this settlement offer is agreeable, and we can settle this lawsuit and in a cordial fashion; thus, eliminating any further additional and expensive litigation.

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Sincerely,



---

**Rene Ortiz**

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11 **EXHIBIT B**  
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Case 2:21-cv-01221-KJM-CKD Document 24 Filed 04/06/22 Page 22 of 29  
**Fw: FIRST AMENDED COMPLAINT**

Rene Ortiz &lt;rene-ortiz@live.com&gt;

Mon 3/21/2022 1:36 PM

To: Ramon Leal &lt;afge1159@gmail.com&gt;; joseph.frueh@usdoj.gov &lt;joseph.frueh@usdoj.gov&gt;; Carter, Dean (USACAE) &lt;dean.carter@usdoj.gov&gt;; Markey, Mary, VBAOAKL &lt;Mary.markey@va.gov&gt;; michele.kwok@va.gov &lt;michele.kwok@va.gov&gt;; Hackney, Rodney, VBAOAKL &lt;Rodney.Hackney@va.gov&gt;; Stroughter, Camille (OGC) &lt;Camille.Stroughter@va.gov&gt;

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Case 2:21-cv-01221-KJM-CRD Document 24 Filed 04/06/22  
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2 attachments (595 KB)

Amended Complainant-Ortiz v Markey et.pdf; First Amended Complaint-Eastern district Court.pdf;

Hello,

I filed suit vs VBA Oakland RO Mgt and AFGE Local 1159. VBA Oakland RO promised me that they would pay my school tuition and travel IAW the Master Agreement. VBA Oakland RO breached their duty and is refusing to honor their Promise.

All I want is to return to full duty as aVCE.

If you're reading this message pls communicate with Mr. Dean Carter and inform him to settle my suit- tell him I want my job back with full pay and benefits

Mr. Dean Carter I challenge the Supreme Court case Henson v. Santander Consumer USA Inc.



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**From:** Rene Ortiz <rene-ortiz@live.com>  
**Sent:** Friday, March 18, 2022 2:34 PM  
**To:** Carter, Dean (USACAE) <dean.carter@usdoj.gov>; joseph.frueh@usdoj.gov <joseph.frueh@usdoj.gov>; Ramon Leal <afge1159@gmail.com>; Markey, Mary, VBAOAKL <Mary.markey@va.gov>; wendy.torres@va.gov <wendy.torres@va.gov>; michele.kwok@va.gov <michele.kwok@va.gov>; Stroughter, Camille (OGC) <Camille.Stroughter@va.gov>; Hackney, Rodney, VBAOAKL <Rodney.Hackney@va.gov>; Clegg, Heidi R. VBASLCY <Heidi.Clegg@va.gov>; webmaster.cae2@usdoj.gov <webmaster.cae2@usdoj.gov>  
**Subject:** FIRST AMENDED COMPLAINT

Hello Mr. Carter

I filed my first amended complaint on Feb 25th. and emailed you each a copy; per the FRCP you had 14 days to answer; to date you have failed or refused to answer.

This is a courtesy notice that I expect an answer to my complaint before I file a Default Judgement on your failure to answer.

I'll give you until March 24<sup>th</sup> to answer, my complaint.

All I want is to return to work as if nothing happened. and I challenge the Supreme Court case Henson v Santander Consumer USA , so you may litigate yourself to the Supreme Court.

In [Case 2:21-cv-01221-KJM-CKD](#) Document 24 Filed 04/06/22 Page 24 of 29  
In Henson v Santander, Santander does not have jurisdiction to be in court, as neither are your defendants- claiming that my case is a denial of VA benefits.





## U.S. MERIT SYSTEMS PROTECTION BOARD

Office of the Clerk of the Board

1615 M Street, N.W.  
Washington, D.C. 20419-0002

Phone: 202-653-7200; Fax: 202-653-7130; E-Mail: [mspb@mspb.gov](mailto:mspb@mspb.gov)

**November 23, 2021**

Notice to:

Rene Ortiz  
7566 Phoenix Park Drive  
Sacramento, CA 95823

Re: Rene Ortiz v. Department of Veterans Affairs  
MSPB Docket Number: SF-0752-21-0536-I-1

The Board acknowledges November 16, 2021 as the filing date of the appellant's petition for review. The agency may file a response, or file a cross petition for review, on or before December 11, 2021. A cross petition for review differs from a response because it also disagrees with the initial decision. If a cross petition for review is filed, any response must be filed within 25 days after the date of service of the cross petition. Any response or cross petition for review is limited to 30 pages or 7500 words, whichever is less.

The appellant may file a reply to the response to the petition for review within 10 days after the date of service of the response. A reply may not be more than 15 pages or 3750 words, whichever is less, and is limited to the factual and legal issues raised in the response to the petition for review. A request to submit any pleading in excess of the limits described above must be submitted in accordance with 5 C.F.R. § 1201.114(h) and will be granted only in exceptional circumstances.

The filing date of any submission described above is the date the document is postmarked, if mailed; the date the document is received by the Board, if personally delivered; the date the facsimile of the document was sent; or the date of electronic submission, if filed via e-Appeal. All submissions must be served on each party and representative and must include a certificate of service. The parties are informed that the Clerk of the Board may reject any submissions that do not substantially conform to the procedural requirements of 5 C.F.R. Part 1201, subpart C. You may review the Board's petition for review procedures at 5 C.F.R. § 1201.114.

The record closes when the time period ends for filing a reply to a response to the petition for review or a response to a cross petition for review. The Board will not accept any pleading other than the ones described above unless the party files a motion and

obtains leave from the Clerk of the Board to file an additional pleading. Any such motion must describe the nature of and need for the pleading. 5 C.F.R. § 1201.114(a)(5). Additionally, after the record closes, the Board may accept an additional submission other than the pleadings described above only if the party was granted leave to file such pleading and the submission includes a statement that convinces the Board that the submission was not readily available before the record closed. 5 C.F.R. § 1201.114(k). All parties are reminded that they must notify the Board and each other in writing of any changes in representation and/or address.

The Board encourages settlement. If the parties settle and they enter a written settlement agreement into the record, the Board will enforce the terms. The Board has no enforcement authority over settlement agreements that are not entered into its record.

#### **NOTICE REGARDING LACK OF QUORUM**

The Merit Systems Protection Board ordinarily is composed of three members, 5 U.S.C. § 1201, but currently no members are in place. Because a majority vote of the Board is required to decide a case, see 5 C.F.R. § 1200.3(a), (e), the Board is unable to issue decisions on petitions for review filed with it at this time. See 5 U.S.C. § 1203. Thus, while parties may continue to file petitions for review during this period and the Office of the Clerk will continue processing petitions for review, no decisions will be issued until at least two Board members are appointed by the President and confirmed by the Senate. The lack of a quorum does not serve to extend the time limit for filing a petition or cross petition. Any party who files such a petition must comply with the time limits specified herein.

**Jennifer Everling  
Acting Clerk of the Board**

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**Lisa L. White  
Paralegal Specialist**

**Attachment: Settlement Program Information**

**PETITION FOR REVIEW SETTLEMENT PROGRAM****Introduction**

In keeping with its policy of encouraging the settlement of appeals, the Board has a program that helps parties resolve their disputes at the petition-for-review level. The program is conducted by settlement attorneys in the Board's Office of General Counsel who are familiar with federal employment law. Settlement will not be attempted in every case because of the Board's limited resources. When a case is selected, a settlement attorney will contact both parties either in writing or by telephone.

**Case Selection**

Cases are selected for the settlement program in several ways. Most are screened by settlement attorneys, as they are received in the Office of the Clerk of the Board. Others are selected by a vote of at least 2 Board members who conclude that settlement efforts would be worthwhile in a particular case. Other cases are selected by decision-writing attorneys in the Office of Appeals Counsel based on their judgment, concurred in by a settlement attorney, that settlement efforts would be appropriate. Still others may be selected based on a party's request.

If you would like the Board's help in settling your appeal at the petition-for-review level, you may call its headquarters offices in Washington, D.C., at 1-800-209-8960, and leave a message. A settlement attorney will contact you to discuss settlement possibilities.

**Settlement Discussions**

If an appeal is selected for the settlement program, the parties and their representatives must be prepared to discuss settlement options in good faith. Representatives must have the authority to enter into a settlement agreement.

When a Board appeal is settled, both parties can gain something that they may lose if the Board decides the appeal by the application of legal principles where, most often, one party wins and the other loses. Depending on the circumstances of a particular case, the advantages of such a settlement to an appellant *might* include: a clean record with the reason for separation recorded as a voluntary resignation; a more acceptable date of separation; a modified penalty; a cash buy-out; receipt of some, if not all, back pay; the agency's agreement not to challenge an application for unemployment benefits; the agency's agreement not to divulge detrimental information to potential future employers; or the payment of some, if not all, attorney fees. The advantages to the agency *might* include: the immediate resolution of an employment problem, possibly extending to other employment disputes involving the same employee; saving the time of agency representatives, management officials, and agency witnesses; not having financial resources tied up in litigation before the Board and the courts; and minimizing or avoiding potential back-pay liability.

*Please keep in mind that these advantages to the appellant and the agency are possibilities only; some or all may not apply to a particular case, but there may be other advantages depending on the nature of the case.*

**Confidentiality**

The Board's settlement attorneys will treat all discussions with parties as strictly confidential. If settlement is attempted in an appeal but an agreement is not reached, the petition for review will be adjudicated on its merits by the Board in the regular manner. The settlement attorneys will *not* divulge any information learned during settlement discussions to Board members or to those who advise the Board on appeals cases or prepare recommended decisions. Because of this strict confidentiality policy, settlement attorneys may speak with the parties to an appeal individually about the merits of the case without violating the prohibition in the Board's regulations against ex parte communications. *See* 5 C.F.R. § 1201.101.

During these discussions, the settlement attorney is free to provide his or her own views of the appeal. While such views are worthy of serious consideration as those of an attorney familiar with Board law, they do not necessarily represent the views of the Board. Again, the purpose of any discussion initiated by a settlement attorney with a party to an appeal before the Board on petition for review is to encourage and help parties to settle their differences.

## CERTIFICATE OF SERVICE

I certify that the attached Document(s) was (were) sent as indicated this day to each of the following:

Appellant

**Appellant Representative**

**Agency Representative**

**Electronic Mail**      **Camille D.S. Stroughter, Esq.**  
**Department of Veterans Affairs**  
**Oakland Regional Counsel Office**  
**Oakland Federal Building**  
**1301 Clay Street, #1400N**  
**Oakland, CA 94612**

November 23, 2021

(Date)

**Lisa L. White**  
**Paralegal Specialist**